

REMARKS/ARGUMENTS

I. Status of the claims

Claims 1-34 are canceled and claims 35-56 are added by the present amendment. With the entry of this amendment, claims 35-56 are pending.

Support for the amended claims can be found in the specification, drawings and originally-filed claims. For example, support for new claim 35 can be found on, e.g., Figure 18 and page 24, lines 25-26 of the specification. Support for new claim 36 can be found on, e.g., page 59, line 24 through page 61, line 17 of the specification. Support for the thymidine kinase promoter recited in claim 37 can be found on, e.g., page 56, lines 7-10. Support for claim 40 can be found on, e.g., Table 1 on page 60, demonstrating the effect of mutation of various CArG elements. Support for claim 46 can be found on, e.g., page 42, lines 5-8 of the specification. Support for new claims 47-54 and 57-58 find support on, e.g., page 32, lines 8-24, page 62, lines 11-12 and the figures of the specification. Support for claim 55 can be found on, e.g., page 32, line 21 and the figures of the specification. Support for claim 56 can be found on, e.g., page 62, line 9 of the specification. No new matter is added.

II. Restriction

Applicants hereby elect with traverse the claims of Group I, directed to isolated polynucleotide comprising an SM-MHC promoter enhancer capable of conferring smooth muscle-specific expression *in vivo*. Newly added claims 35-56 correspond to the elected group.

According to the MPEP, where claims can be examined together without undue burden, the Examiner must examine the claims on the merits even though they are directed to independent and distinct inventions. *See*, the MPEP at 803.01. In establishing that an "undue burden" would exist for co-examination of claims, the Examiner must show that examination of the claims would involve substantially different prior art searches, making the co-examination burdensome. Applicants respectfully submit that examination of the claims in Groups I-IV would not create an undue burden and respectfully request withdrawal of the restriction requirement in this case.

Appl. No. 10/057,726
Amdt. dated September 4, 2003
Reply to Office Action of July 29, 2003

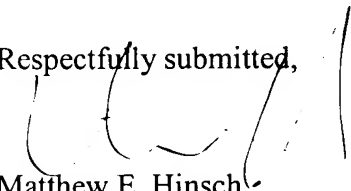
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CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,


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